

Education Counts: Turning Crisis Into Opportunity for Adolescents

By Judge Judith S. Kaye

ABSTRACT

This essay, adapted from the keynote address delivered at the National Council of Juvenile and Family Court Judges' 72nd Annual Conference on July 13, 2009, in Chicago, Illinois, focuses on adolescents and education—a strategy that is not only economically sound but also logical, indeed honorable. So just how do we begin to turn the crisis facing too many children and families into opportunity? How do we interrupt, and reroute, that perilous pipeline to prison? How do we help to build off-ramps from the disastrous destiny that awaits so many young people? How do we regain our leadership role in constructive juvenile justice instead of juvenile incarceration? I believe judges can take a leadership role in addressing these questions. It's our children's future to be sure, but it's ours too. Indeed, it's the very future of our nation that is at stake.

I know that you have a crowded agenda of fascinating programs and events over the next couple of days. Nonetheless, I simply have to begin my remarks on a personal note with heartfelt thanks to the Council, to all of you who are part of it, and to my many friends in the audience from across the country, for a genuinely life-transforming encounter back in 1993.

Though I was well familiar with the excellent work of this organization, unforgettable for me, as New York State's then brand new Chief Judge, is my very first face-to-face meeting with the Council, on a visit to the juvenile court in Cincinnati, Ohio. That

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encounter sealed what I know will be a forever bond among us, as well as my own forever commitment to children and families. Now my years as Chief Judge—my years on the bench—sadly have come to an end. Much as I loved being a judge, it was by far the better alternative to not reaching New York State's mandatory retirement age. My term may have ended but my admiration for all of you, and my dedication to your work, will never end. You have my word on that.

That having been said, I turn to the issue at hand, which is how we, individually and together, in courts throughout the nation, can help to transform the lives of thousands upon thousands of troubled families and children. It's their future to be sure, but it's ours too. Indeed, it's the very future of our nation that is at stake.

And as we know, the need is greater than ever, given the extraordinary stresses of today's bleak economy—massive foreclosures and evictions, homelessness and joblessness; shrinking services; inability to pay child support, afford college tuition or meet medical needs—and their inevitable companion, increases in crime, family disruption, domestic violence, substance abuse and child abuse. Need I go on with this all-too-familiar litany? Plainly, now more than ever, we need to find ways to turn crisis into opportunity.

Today I want to focus on one opportunity that is not only economically sound but also logical, indeed honorable—adolescents, who stand at the brink of adulthood. Why adolescents? Because adolescents increasingly spend more time on their own, making key choices about friends, school and how to use their free time, choices that may have lifetime consequences. As social beings formalizing their personalities, adolescents face peer pressure that leads to both healthy and risky behaviors, not the least of them substance abuse and unsafe sexual behaviors. It's a critical moment of opportunity for positive intervention.

And when we improve outcomes for adolescents, we improve the health and well-being of our entire nation. Our children must grow strong—physically, mentally, socially and academically. They need skills to compete and interact in a challenging digital, globally inter-connected world. Yet many of them are reaching adulthood wholly unprepared to participate. How can we help to change that picture? How can we offer at-risk adolescents off-ramps from disaster?

Take, for example, two groups especially well known to courts—disconnected and crossover youth.

Year after year we see an estimated half million kids drop out of school and join the approximately 3.8 million young people between the ages of 16 and 24 who are neither enrolled in school nor working—disconnected youth.¹

A disproportionate number are African-American males among the high school dropouts, homeless and runaway youth, young people who have been in prison or placement, and those who have aged out of foster care.² Many lack basic literacy skills and

1 CTR. FOR LAW & SOC. POL'Y, CLASP FEDERAL POLICY RECOMMENDATIONS FOR 2009 AND BEYOND 8 (Oct. 16, 2008), *available at* http://www.clasp.org/publications/clasp_fedpolicyrecommendationsfor2009andbeyond.pdf.

2 U.S. GOV. ACCOUNTABILITY OFFICE, DISCONNECTED YOUTH 6 (Feb. 2008), *available at* <http://www.gao.gov/new.items/d08313.pdf>.

have emotional disturbances and learning disabilities.³ Nearly half of the children who age out of foster care have not finished high school, and too many are themselves parents.⁴ We've seen disturbing increases in pregnancy among teenage girls.⁵

While most children do not have contact with the juvenile justice system, regrettably too many do, especially current and former foster care youth who end up in juvenile and correctional institutions.⁶ There is an unmistakable channel between the child welfare and the juvenile and adult justice systems that the Children's Defense Fund aptly calls the Cradle to Prison Pipeline[®], where too often race and poverty are contributing factors.⁷

Young people who penetrate both the child welfare and court systems—our dually-adjudicated, or crossover, youth—lack a coordinated intervention as the various systems overwhelmingly fail to provide an integrated response or even share information. Yet we know that many in the child welfare system are at risk of delinquency, and many in the delinquency system have been victims of abuse or maltreatment. It's no surprise that children experiencing persistent maltreatment from infancy to adulthood, or maltreatment during adolescence, are themselves at increased risk of juvenile delinquency and criminality.⁸

Our nation had been a leader in its constructive approach to juvenile justice. In 1899, we developed the world's first juvenile court right here in Chicago, a specialized

3 *Id.* at 6.

4 See MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE NINETEEN 21, 56 (May 2005), available at http://www.chapinhall.org/sites/default/files/ChapinHallDocument_4.pdf.

5 See Joyce A. Martin et al., *Births: Final Data for 2006* 57 NATIONAL VITAL STATISTICS REPORTS 4 (NCHS 2009), available at http://www.cdc.gov/nchs/data/nvst/nvsr57/nvsr57_07.pdf ("The birth rate for teenagers aged 15-19 years rose 3 percent in 2006, interrupting the long-term decline that had extended from 1991 through 2005. The rate in 2006 was 41.9 births per 1,000 females aged 15-19 years, up from 40.5 in 2005. The teen birth rate had dropped 34 percent from 1991 (61.8) to 2005.").

6 See ROBERT B. HILL, CASEY-CSSP ALLIANCE FOR RACIAL EQUITY IN THE CHILD WELFARE SYSTEM, SYNTHESIS OF RESEARCH ON DISPROPORTIONALITY IN CHILD WELFARE: AN UPDATE 32 (Oct. 2006), available at <http://www.casey.org/Resources/Publications/SynthesisOfResearchDisproportionality.htm> ("According to the research literature, childhood maltreatment is strongly correlated with delinquent behavior (Morris & Freundlich, 2004). Studies have found that maltreated children are more likely than nonmaltreated children to engage in delinquent behavior that eventually leads to incarceration (English, Widom & Brandford, 2001; Maxfield & Widom, 1996; Smith & Thornberry, 1995; Wiebush, Freitag & Baird, 2001). A study in New York City revealed that most of the adolescents entering the child welfare system were actually returning; they had been in child welfare initially and then entered the juvenile justice system (Armstrong, 1998)."); see also, M. Johnson-Reid & R. Barth, *From Placement to Prison: The Path to Adolescent Incarceration from Child Welfare Supervised Foster or Group Care*, 7 CHILDREN AND YOUTH SERVICES REVIEW 22 (2000); see also, Bureau of Justice Statistics, *Criminal Offenders Statistics* (accessed 8/19/09), available at <http://www.ojp.usdoj.gov/bjs/crimoff.htm#prevalence> (In 2002, approximately 12 percent of jail inmates had lived in a foster home or institution.).

7 See Children's Defense Fund Cradle to Prison Pipeline[®] Campaign, available at <http://www.childrensdefense.org/helping-americas-children/cradle-to-prison-pipeline-campaign/> ("Nationally, 1 in 3 Black and 1 in 6 Latino boys born in 2001 are at risk of imprisonment during their lifetime . . . CDF's vision with its *Cradle to Prison Pipeline* campaign is to reduce detention and incarceration by increasing preventive supports and services children need, such as access to quality early childhood development and education services and accessible, comprehensive health and mental health coverage.").

8 See, e.g., T.P. Thornberry, *Co-occurrence of Problem Behaviors among Adolescents*, Paper presented at Multi-Systems Approaches in Child Welfare and Juvenile Justice: Wingspread Conference, the Johnson Foundation and the Center for Juvenile Justice Reform (2008).

court intended to prioritize our commitment to children.⁹ Today, by contrast, we are a leader in juvenile incarceration. We lock up more young people than any other nation in the world.¹⁰ Over-reliance on detention and incarceration for young offenders not only has produced undesirable outcomes but also has subjected far too many of them to shockingly harsh and abusive treatment.¹¹ Adult criminal responsibility currently begins at age 16 in Connecticut, North Carolina, and New York (my home state).¹²

Along with our nation's increased reliance on incarceration comes family disruption and obliteration. Today, more than two million children have an incarcerated parent—that's 50 percent more than a decade ago.¹³ Two out of three incarcerated mothers were the sole custodial parent before incarceration, and two out of five incarcerated fathers were

9 OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, *JUVENILE JUSTICE: A CENTURY OF CHANGE 2* (December 1999), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/178995.pdf>.

10 See JUVENILE JUSTICE NETWORK, *JUVENILE JUSTICE TRANSITION PAPER 1* (Nov. 23, 2008), available at http://pachildrensnews.org/PDFs/NJJN_Transition_Paper.pdf.

11 See *New York's Disgrace*, N.Y. TIMES, Aug. 25, 2009, at A20 ("The Justice Department has sued several state juvenile detention systems for subjecting children to neglect and abuse. The department is now threatening to sue New York for the same reasons, and rightly so. A recently completed federal investigation has documented unsafe and, in some cases, heartbreaking conditions in several New York state detention facilities . . . This problem has been festering for decades."); Civil Rights Division, U.S. Dept. of Justice, *Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tryon Residential Center, and Tryon Girls Center*, Letter to Governor David A. Paterson, Aug. 14, 2009, available at http://www.usdoj.gov/crt/split/documents/NY_juvenile_facilities_findlet_08-14-2009.pdf (In New York State alone, four juvenile residential centers were cited for failure to protect youth from harm and failure to provide adequate mental health care and treatment.); Nicholas Confessore, *Four Youth Prisons in New York Used Excessive Force*, N.Y. TIMES, Aug. 25, 2009, at A1 ("Excessive physical force was routinely used to discipline children at several juvenile prisons in New York, resulting in broken bones, shattered teeth, concussions and dozens of other serious injuries over a period of less than two years, a federal investigation has found."); see also, *Locking Up Fewer Children*, N.Y. TIMES, Aug. 14, 2009, at A18 (Emerging research shows, "Children who spend time in detention are far more likely to leave school, suffer alcohol or drug abuse problems or commit violent crimes as adults. A far better approach—for these young people (offenders) as well as overburdened government budgets—is to lock up only truly dangerous children and enroll the rest in community-based monitoring programs . . . experiments showed that closely supervising young offenders, instead of incarcerating them, did not increase the youth crime rate or the risk to public safety").

12 As of this publication, North Carolina and Connecticut—unlike New York—have taken legislative action to raise the age of adult criminal responsibility. See NC Department of Juvenile Justice and Delinquency Prevention, *Legislative Update*, DJJDP COMMUNIQUÉ, May 29, 2009, at 2, available at http://www.ncdjdp.org/resources/pdf_documents/newsletter/001_05_29_09.pdf (The Youth Accountability Act (HB 1414), pending in the North Carolina General Assembly, "would define delinquent juvenile as a juvenile who is between six years of age and eighteen years of age who commits a crime or infraction and to establish a task force for implementation of the Youth Accountability Act. This bill would essentially raise the age of juvenile jurisdiction from 16 years old to 18 years old in a 5-year phase-in approach."); see also, *Raising the Age of Juvenile Court Jurisdiction* (PA 07-4 (June Sp. Sess.) § 84, effective Jul. 1, 2007), available at http://search.cga.state.ct.us/dtSearch_lpa.html (In summary of Connecticut legislation, "Beginning January 1, 2010, juvenile courts may handle cases involving 16- and 17-year-olds accused of committing crimes. Currently, these youths are considered adults and must be prosecuted in criminal court. Cases involving serious felonies will continue to be automatically transferred to adult court and prosecutors will retain the authority to ask judges to transfer others. Certain motor vehicle offenses will also remain outside the juvenile court's jurisdiction. The new law authorizes the Judicial Branch to hire five more judges and requires it to evaluate existing juvenile programs and services and make changes needed to ensure that they will meet the needs of 16- and 17-year-olds. It also creates the 24-member Juvenile Jurisdiction Policy and Operations Coordinating Council (JJPOCC) to monitor the implementation of new and modified programs, procedures, and court operations associated with raising the delinquency age. It must study specified issues and make recommendations to legislative committees.").

13 Nell Bernstein, *A Bill of Rights for Children of Prisoners*, CHILDREN'S VOICE (September/October, 2004), available at <http://www.cwla.org/articles/cv0409cop.htm>.

living with their children prior to imprisonment.¹⁴ It's what *The New York Times* in a recent article called the "incarceration generation."¹⁵ Incarceration of parents necessarily places additional burdens on governmental services such as public assistance, schools and foster care agencies.

A crisis to be sure. And as the saying goes, a crisis is a terrible thing to waste. So just how do we begin to turn this crisis into opportunity? How do we interrupt, and reroute, that perilous pipeline? How do we help to build off-ramps from the disastrous destiny that awaits so many young people? How do we regain our leadership role in juvenile justice instead of juvenile incarceration?

Although several thoughts come to mind, ultimately one word always rises to the top of my list: *education*. My own immigrant parents put it there, and boy were they right! From Plato to Jefferson to Obama, the message is clear: education is a fundamental right that enables citizens to participate in a democratic society.

Do you know the three "R's" for successful schools today? They are *rigor* (schools with high expectations and challenging coursework for all of their students), *relevance* (their curricula are highly engaging and keyed to students interests and aspirations) and *relationships* (all students get attention and support in a safe, respectful environment).¹⁶ As a Lincoln Center Board member back in New York City, I am so pleased to be participating in the development of a charter school and a curriculum for "imagination learning" through the study of works of art. But let's be frank, how many children today have opportunities like that?

Perhaps now more than ever, quality education—the 21st century three "R's" kind of education—is the key to keeping kids in school and opening doors for them. And the doors we need to open are doors to opportunity, not doors to prison. Plainly, keeping kids in school and out of courts—increasing graduation rates—would make an enormous difference in their future, and in our future too, reducing crime and saving literally billions of dollars and thousands of lives.¹⁷

Precisely how can we help to achieve this essential societal objective?

It's only been six months since I left the bench, so I have by no means forgotten that judges have only limited ability to make miracles and particularly limited ability to impact the education system. But frankly, I got completely carried away when I studied your packed Conference Schedule of ingenious ideas. It gave me hope that if I shared some of my dreams with you, you might be just the right group to traverse the boundaries and accomplish them.

14 JEREMY TRAVIS ET AL., URBAN INSTITUTE, *FAMILIES LEFT BEHIND: THE HIDDEN COSTS OF INCARCERATION AND REENTRY* 4 (Oct. 2003; Revised Jun. 2005), *available at* http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf.

15 Erik Eckholm, *In Prisoners' Wake, a Tide of Troubled Kids*, N.Y. TIMES, Jul. 5, 2009, at A13.

16 BILL & MELINDA GATES FOUNDATION, *COLLEGE READY* 4 (2009), *available at* <http://www.gatesfoundation.org/learning/Documents/College-ready-education-plan-brochure.pdf>.

17 For a summary of research showing the relationship between high school graduation rates and crime rates, and a relationship between educational attainment and the likelihood of incarceration, *see* JUVENILE JUSTICE POLICY INSTITUTE, *EDUCATION AND PUBLIC SAFETY* (Aug. 30, 2007), *available at* http://www.justicepolicy.org/images/upload/07-08_REP_EducationAndPublicSafety_PS-AC.pdf.

You are, after all, committed, creative, forward-looking leaders who have dedicated your lives to dealing with the most vexing, heart-rending issues in our entire justice system: child abuse, family dissolution, domestic violence, juvenile detention, termination of parental rights, foster care—and that’s just before the lunch break! You are the “can-do cadre” of the justice system. If anyone can help to turn this crisis into opportunity for keeping kids in school and out of courts and prisons, I am convinced that it is all of you. If anyone can lead in the return of juvenile and family courts to the original constructive concept of helping rather than simply removing and sentencing youth,¹⁸ I am convinced that it is all of you.

I’ll start with a population regularly before us: children in foster care—children literally in our custody. How can we shine a spotlight on their education? Education simply does not command the focus it deserves.

For most children in care, for example, we see no single person who stands responsible for focusing on their school performance, keeping them in school, no one even to question the thoughtless chaotic multiple school transfers that are so common among foster children. These are things a good parent would do. And that lack of attention sadly is reflected in their educational performance—increased risk of grade retention, lower scores on standardized tests, higher absenteeism, tardiness, truancy and dropout rates.¹⁹

We need to work with schools to counter the consequences of abuse, maltreatment, separation and lack of stability. We’ve been learning so much about how childhood trauma changes the biology of the brain. The research also shows the importance of support. Even when a child has a poor relationship with a primary caregiver, just a single secure relationship—a teacher, a coach, a CASA, an advisor, a mentor, just one person watching, one person who cares—can turn a child’s life around.²⁰ We’ve seen that in our own lives, haven’t we? All children need and deserve someone who cares about their school performance.

There are so many exciting new opportunities to promote educational stability for children in foster care. We have to seize them, bring education to the forefront, make everyone more aware of its importance, and encourage pursuit of the new financial and other stimuli the law today offers.

For other at-risk adolescents, we need to work in the courts as well as collaboratively across systems to create a host of off-ramps that will hold them accountable while simultaneously offering them the structure and support they need to embark on successful, law-abiding lives. For too long, we’ve felt we have to choose between punishment and compassion when it comes to adolescent misbehavior. Plainly we need to have both.

18 For a summary of the history of juvenile and family court, see OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *supra* note 9; see also Merril Sobie, *The Family Court: A Short History*, available at http://www.courts.state.ny.us/history/family_ct/History_Fam_Ct.htm#8CASE.

19 See, e.g., P. J. PECORA ET AL., CASEY FAMILY PROGRAMS, IMPROVING FAMILY FOSTER CARE: FINDINGS FROM THE NORTHWEST FOSTER CARE ALUMNI STUDY (2005); C. SMITHGALL ET AL., CHAPIN HALL CENTER FOR CHILDREN AT THE UNIVERSITY OF CHICAGO, EDUCATIONAL EXPERIENCES OF CHILDREN IN OUT-OF-HOME CARE (2004).

20 See, e.g., HealingResources.Info, SECTION SIX: YOU MAKE THE DIFFERENCE, TRAUMA, BRAIN AND RELATIONSHIP: HELPING CHILDREN HEAL, available at <http://www.traumaresources.org/index.htm>.

One program that I think holds promise, and am vigorously pursuing in New York, is youth courts. It's not a new idea, I know, but my thought is to give them a 21st century facelift, really starch them up, because they can be significant on several fronts.

Youth courts are teen-led tribunals where young people trained in the justice system—which alone is a great benefit—actually hear low-level criminal cases involving their peers. In a typical youth court case, a young person arrested for a minor offense such as shoplifting or vandalism receives a sentence that is both punitive and restorative—but avoids that first criminal conviction, which is a lifetime scar. In that sense youth court offers a genuine second chance. Sanctions include restitution, community service, letters of apology, and links to services like tutoring and anger management workshops. And we're hoping to add a mentoring connection as well. No one said it better than a young woman at the Staten Island Youth Court graduation: "Youth courts help us all realize that actions have consequences."²¹

The structure of youth courts of course varies considerably across and even within the states, but the basic principle is the same: if peer pressure can lead young people into delinquency, then it can also keep them out of delinquency.²² These collaborative programs have been shown to reduce recidivism among adolescents charged with minor law violations.²³ They're certainly worth a try.

Reasoning backwards from formalized youth courts, which are triggered by an actual arrest, why can't more be done earlier, before student misconduct reaches a point of arrest?

Sadly, a philosophy of zero tolerance has dominated the national approach to school discipline since the early 1990s.²⁴ Yet it has been shown that school suspension—the prime tool of zero tolerance—has actually led to higher rates of misbehavior and ultimately incarceration.²⁵ Same for increased reliance on referrals to the juvenile justice

21 For additional information about the Staten Island Youth Court, see Judith S. Kaye, *Staten Island Youth Court Helps Mold Law-Abiding Citizens*, STATEN ISLAND ADVANCE, Jun. 28, 2009, available at http://www.silive.com/news/index.ssf/2009/06/youth_court_helps_mold_lawabid.html; see also Peter N. Spencer, *Underage Offenders on Staten Island will be Judged by Their Peers*, STATEN ISLAND ADVANCE, Jan. 11, 2009, available at http://www.silive.com/news/index.ssf/2009/01/underage_offenders_will_be_jud.html.

22 See JEFFREY BUTTS ET AL., *THE IMPACT OF TEEN COURT ON YOUNG OFFENDERS* 37 (2002), available at <http://www.jbutts.com/pdfs/410457.pdf>.

23 *Id.* at 34-36.

24 RUSSELL SKIBA ET AL., APA, AMERICAN PSYCHOLOGICAL ASSOCIATION ZERO TOLERANCE TASK FORCE, *ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS* 2 (Feb. 1, 2006) ("Originally developed as an approach to drug enforcement, the term (zero tolerance) became widely adopted in schools in the early 1990s as a philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context. Such policies appear to be relatively widespread in America's schools, although the lack of a single definition of zero tolerance makes it difficult to estimate how prevalent such policies may be. In addition to universal goals of any school discipline approach, such as maintaining a safe school climate, zero tolerance policies assume that removing students who engage in disruptive behavior will deter others from disruption, and create an improved climate for those students who remain.").

25 *Id.* at 5 ("The notion of deterring future misbehavior is central to the philosophy of zero tolerance, and the impact of any consequence on future behavior is the defining characteristic of effective punishment. Rather than reducing the likelihood of disruption however, school suspension in general appears to predict

system for school infractions.²⁶ In my day, “detention” meant an uncomfortable hour or two in a supervised classroom, or even worse perhaps an unpleasant trip to the principal’s office. Today, 16-year-olds can find themselves the subject of detention in a faraway out-of-home placement, or even the subject of a criminal prosecution, for a first-time nonviolent misdemeanor.

Surely we can do better through earlier, improved attention to truancy and dysfunction, and diversion from the courts. Out-of-school suspension is not the only answer for attendance issues. We need to make prevention—investments and commitments to leadership, planning, collaboration and resources that promote positive behaviors—a primary focus.

Clearly, courts and judges need better dispositional options, particularly when it comes to kids who shouldn’t be placed but don’t have stable living situations to which they can be returned.

During my Chief Judge years, I was delighted to see the concept of problem-solving justice—restorative justice—gain tremendous acceptability. I saw wonderful collaborations inspired and led by *judges*—like drug courts and mental health courts—flourish throughout our State, indeed throughout the nation and the world. It wouldn’t have happened without judicial leadership.

Why can’t judicial leadership also inspire more problem-solving approaches for re-routing juveniles? Success, as we know, depends on a coordinated team approach in which all of the stakeholders—including the service providers, school representatives, the court system, children’s attorneys, probation officers and community stakeholders—all work together with a common purpose, a wraparound assessment that understands a family’s strengths as well as its needs, and ultimately an integrated treatment. No one can convene a group, a collaboration, better than the judges.

Thankfully, during my Chief Judge years I also saw a growing awareness that out-of-home placement generally should be reserved for young people who are dangerous. So many of us are visiting Missouri these days—it’s time to bring the lessons of Missouri home.²⁷ How can a system that calls itself the justice system rationalize the removal of a

higher future rates of misbehavior and suspension among those students who are suspended. In the long term, school suspension and expulsion are moderately associated with a higher likelihood of school dropout and failure to graduate on time.”).

26 *Id.* at 9-10 (“There is evidence that the introduction of zero tolerance policies has affected the delicate balance between the educational and juvenile justice systems. Zero tolerance policies appear to have increased the use and reliance in schools on strategies such as security technology, security personnel, and profiling . . . The increased reliance on more severe consequences in response to student disruption has also resulted in an increase of referrals to the juvenile justice system for infractions that were once handled in school. The study of this phenomenon has been termed the *school-to-prison pipeline*. Research indicates that many schools appear to be using the juvenile justice system to a greater extent and, in a relatively large percentage of cases, the school-based infractions for which juvenile justice is called upon are not those that would generally be considered dangerous or threatening.”).

27 See Ash Institute, Harvard Kennedy School, Harvard University, *Division of Youth Services Honored as Innovations in American Government Award Winner Announcement* (Sept. 9, 2008), available at http://content.knowledgeplex.org/streams/ksg/AshInstitute/09.09.08_DYS.pdf (The Ash Institute for Democratic Governance and Innovation at Harvard Kennedy School selected Missouri’s Division of Youth Services as the winner of the 2008 Annie E. Casey Innovations Award in Children and Family System Reform. “Recognized as ‘the guiding light for reform in juvenile justice’ by the American Youth Policy Forum, the Missouri Division of Youth Services (DYS) forwards a promising new philosophy in treatment of youth offenders at its

child from home and assignment to a facility, based on the commission of a non-violent misdemeanor? Surely, we can devise better alternatives for the challenges these children pose.

And what awaits young people when they return home from placement? Families are often overburdened and unable to provide support, reluctant to take a child back; services are frequently inaccessible or unaffordable; and there is often little in the way of meaningful supervision and guidance. What we need is a system in which preparation for reentry begins at the time of placement, like the most appropriate school match, parent training and assistance, and other services.²⁸

We cannot wait for the children to come home to start the process of identification and enrollment. Attention must be paid to insuring that young people comply with the conditions of their release, but they also need to be given a fighting chance to reintegrate into their homes and neighborhoods, to be welcomed back into their schools and, for the older adolescents, to be given vocational training and access to employment so that they can start down the path to self-sufficiency.

WHAT CAN WE DO?

- We can stay better informed about adolescent development, including the effects of maltreatment and trauma, and better informed about the emerging issues facing adolescents today.
- We can be sure to reap the full benefit of stimulus funds²⁹ and recent laws like Fostering Connections.³⁰

42 locations across the state. Instead of the predominant punitive practices, DYS takes a therapeutic approach, viewing youth as a direct product of their experiences and capable of turning their lives around through a step by step change process.”).

28 In addition to families, research shows that there are many factors that influence successful reentry. See, e.g., DANIEL P. MEARS & JEREMY TRAVIS, THE URBAN INSTITUTE, THE DIMENSIONS, PATHWAYS, AND CONSEQUENCES OF YOUTH REENTRY 10 (2004) (“The seven domains along which these challenges occur include: (1) family and living arrangements; (2) peer groups and friends; (3) mental, behavioral, and physical health; (4) substance abuse; (5) education and schooling; (6) vocational training and employment; and (7) leisure, recreation, and avocational interests.”).

29 The *American Recovery and Reinvestment Act of 2009 (ARRA)* (Public Law No: 111-5) was signed into law on Feb. 17, 2009, available at <http://www.govtrack.us/congress/bill.xpd?bill=h111-1>. For a summary of the law, see U.S. DEPARTMENT OF EDUCATION, THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009: SAVING AND CREATING JOBS AND REFORMING EDUCATION (2009), available at <http://www.ed.gov/policy/gen/leg/recovery/implementation.html> (In summary, “The American Recovery and Reinvestment Act of 2009 (ARRA) provides approximately \$100 billion for education, creating a historic opportunity to save hundreds of thousands of jobs, support states and school districts, and advance reforms and improvements that will create long-lasting results for our students and our nation including early learning, K-12, and post-secondary education.”).

30 The *Fostering Connections to Success and Increasing Adoptions Act* (Public Law No: 110-351) was signed into law on Oct. 7, 2008, available at <http://www.govtrack.us/congress/bill.xpd?bill=h110-6893>. For a summary of the law, see ABA, ABA FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT (H.R.6893) SUMMARY (2008), available at <http://www.abanet.org/child/education/publications/fosteringconnections.html> (The Fostering Connections Act “will help hundreds of thousands of children and youth in foster care by promoting permanent families for them through relative guardianship and adoption and improving education and health care. Additionally, it will extend federal support for youth to age 21. The act will also offer for the first time many American Indian children important federal protections and support.” “Among its provisions to address the needs of children and youth in foster care, it seeks to promote education stability for foster children.”).

- We can develop collaborations with schools to promote disciplinary reform, knowing that an attitude of zero tolerance increases rates of disruption and school dropout, and disproportionately affects minority youth.³¹
- In line with the Council's Courts Catalyzing Change agenda, we can engage governments and schools to address issues relating to the disproportionate representation and disparate treatment of racial and ethnic minority children in the child welfare system and criminal and juvenile justice systems.³²
- We can identify mentoring opportunities. Mentoring can reduce the incidence of risky behaviors and promote positive outcomes, including improved social skills, career development and educational outcomes.³³
- As judicial leaders, we can bring together individuals and groups—starting with your Chief Justices—to address the needs of at-risk youth by sharing ideas, developing partnerships, and coordinating and networking across systems.

Again and again we ask children from an early age, "What do you want to be when you grow up?" On a billboard across the street from my new office in midtown Manhattan, a beautiful little African-American girl (seven or so years old) is pictured answering that question with one word: "PHYSICIST!" I smile every day as I pass by that billboard. How wonderful! It's so uplifting! But we also have to ask ourselves the corollary question: Are we providing the opportunities and supports children need to achieve their ambitions? Not much to smile about.

In the end I come full circle back to my opening thought, which is to express the personal gratitude I feel for this chance to be with you. You are an extraordinary network of extraordinary people. There is not a single thing I have mentioned today, nothing I have even thought of, that you have not already anticipated and will be covering magnificently over the next couple of days. Your knowledge, instincts and creativity, individually and multiplied together, are simply breathtaking. Your can-do positive attitude, optimism and commitment are genuinely contagious and energizing. Of one thing I am certain: There is a great deal we can do to insure the ambition of that young aspiring physicist, so much we can do to bring this nation's promise of equal opportunity closer to reality. I know we will each leave this fabulous Conference with new materials, new contacts, new ideas and new resolve to make this a better world for our children.

31 Skiba, *supra* note 24, at 5, 56.

32 MIMARI HALL & SOPHIA GATOWSKI, NAT'L COUNCIL OF JUVENILE & FAM. CT. JUDGES, COURTS CATALYZING CHANGE: ACHIEVING FAIRNESS AND EQUITY IN FOSTER CARE KEY INDICATORS/KEY MEASURES RESEARCH REPORT 1 (Jan. 2008), *available at* <http://www.ncjfcj.org/images/stories/dept/ppcd/CCC/courts%20catalyzing%20change%20project%20research%20results.pdf> ("The National Council of Juvenile and Family Court Judges and Casey Family Programs are working to develop a national agenda to address disproportionate representation and disparities for minority children and families in the dependency court system.").

33 For a summary of research, *see* SUSAN JEKIELEK ET AL., CHILD TRENDS, MENTORING PROGRAMS AND YOUTH DEVELOPMENT: A SYNTHESIS (Jan. 2002), *available at* http://www.childtrends.org/what_works/clarkwww/mentor/mentorrrpt.pdf.